

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 28, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JESS R. OSBORNE #775970,

Plaintiff,

v.

JOHN SMITH, Medical Director for
Washington State Penitentiary and
JAMES DUNCAN, PA-C,

Defendants.

No. 4:19-cv-05054-SMJ

ORDER DISMISSING ACTION

Plaintiff Jess Osborne is proceeding *pro se* and in forma pauperis. Since May of 2021, mail sent to Plaintiff at his address on file with the Clerk's Office has been returned as undeliverable. Though notified of his responsibility to keep the Court apprised of his current mailing address, Plaintiff has failed to provide the Clerk of Court with an updated address despite a Court Order sent to his presumably current mailing address. The Court thus dismisses this action without prejudice for failing to comply with LCivR 41(b)(2).

BACKGROUND

Plaintiff filed this instant 42 U.S.C. § 1983 claim against several Washington State Department of Corrections medical providers on April 9, 2019. ECF No. 1. Plaintiff, proceeding *pro se* and *in forma pauperis*, was a prisoner at the Washington

1 State Penitentiary at the time he filed his complaint. The Court twice directed
2 Plaintiff to amend his complaint, which he did. *See* ECF Nos. 17, 27. Plaintiff's
3 Second Amended Complaint, the operative complaint, asserts a claim for deliberate
4 indifference to his medical needs. ECF No. 27. On August 7, 2020, the Court
5 directed service of Plaintiff's Second Amended Complaint on Defendants Dr. John
6 Smith and PA-C James Duncan. ECF No. 28.

7 On September 30, 2020, Plaintiff filed a notice with the Court indicating that
8 he was no longer incarcerated and provided the Court with an updated address in
9 Tacoma, Washington. ECF No. 36. The Court held a scheduling conference on
10 March 18, 2021, which Plaintiff attended. ECF No. 42. One week later, on March
11 25, 2021, the Court issued a Scheduling Order setting forth the trial and date and
12 corresponding case management deadlines in this matter. ECF No. 43. As is
13 customary, the Clerk's Office mailed the Order to Plaintiff via United States Postal
14 Service ("USPS") mail, as Plaintiff was not registered as an authorized CM/ECF
15 system user. On May 11, 2021, the Clerk's Office entered a notice that the mail was
16 returned as undeliverable, with a handwritten note on the outer envelope stating:
17 "Doesn't live at this address." ECF No. 44.

18 On December 23, 2021, Defendants filed a Motion for Summary Judgment,
19 ECF No. 47, seeking summary dismissal of Plaintiff's claim for deliberate
20 indifference to his medical needs. To date, Plaintiff has not responded to the motion.

1 Then, on January 5, 2022, the parties filed a Stipulated Motion to Extend Deadlines
2 and Trial Date, ECF No. 53. The motion was signed by Plaintiff. Listed under
3 Plaintiff's signature is an address in Federal Way, Washington—which is
4 presumably Plaintiff's current address.¹ *Id.* The Court granted the parties' motion
5 on January 14, 2022, and the Order was sent to Plaintiff via USPS mail at the
6 address in Tacoma, Washington—the address still on file for Plaintiff.

7 Several days later, on January 18, 2022, the Court issued an Order reminding
8 Plaintiff of his responsibility to keep his address for service up to date and directed
9 Plaintiff to provide a current address to the Clerk of Court by no later than January
10 25, 2022. ECF No. 57. The Court directed the Clerk's Office to send a copy of the
11 Order to the address on file for Plaintiff—*i.e.*, the address in Tacoma, Washington,
12 as well as the address listed by Plaintiff in the stipulated motion to continue—*i.e.*,
13 the address in Federal Way, Washington. *Id.* at 1.

14
15 ¹ The Court also notes that, as required by the Court, the Attorney General's Office
16 filed a Pro Se Prisoner Dispositive Motion Notice contemporaneously with its
17 motion for summary judgment. ECF No. 52. The Notice advised Plaintiff that
18 Defendants had filed a motion for summary judgment under Federal Rule of Civil
19 Procedure 56 and informed Plaintiff that he must "file a response opposing the
20 motion within 30 days after the date the motion was mailed to you as noted on the
certificate of mailing, or within such other time period set by the Court." *Id.* at 1.
The Notice also stated: "[b]e advised that if you do not file your response...within
the mandated timeframe, your failure to file a response will constitute your consent
to the Court, granting the motion." *Id.* at 2; *see also* LCivR 7.1(e). This notice was
delivered to the address in Federal Way, Washington. *Id.* Plaintiff has not filed a
response to Defendants' summary judgment motion or otherwise acknowledged it.

1 On January 24, 2022, the Clerk's Office entered another notice that the mail
2 sent to Plaintiff at the Tacoma, Washington address was returned as undeliverable.
3 *Id.* The record does not contain any indication that the mail sent to Plaintiff at his
4 presumed current address in Federal Way could not be delivered. As of the date of
5 this Order, Plaintiff has still not provided the Clerk's Office with an updated
6 address.

7 DISCUSSION

8 Under LCivR41(b)(2), a party proceeding pro se has an obligation to "keep
9 the Court and opposing parties advised as to his or her current mailing address."
10 This Rule provides that "[i]f mail directed to a pro se plaintiff is returned by the
11 Postal Service...and if such plaintiff fails to notify the Court and opposing parties
12 within 60 days thereafter of his or her current mailing...address, the Court may
13 dismiss the action." *Id.*; see also *Carey v. King*, 856 F.2d 1439 (9th Cir. 1988) (no
14 abuse of discretion where district court dismissed without prejudice pro se
15 plaintiff's action for failure to comply with local rule requiring pro se plaintiffs to
16 keep the court apprised of their addresses at all times). Here, mail sent to Plaintiff
17 at the Tacoma, Washington address has been returning as undeliverable for almost
18 one year. See ECF No. 44. Moreover, several months ago, the Court ordered
19 Plaintiff to update his address and sent a copy of the Order to his presumably current
20 address in Federal Way, Washington. Plaintiff has not updated his address despite

1 this Order. In the interest of judicial economy and pursuant to LCivR41(b)(2), the
2 Court therefore dismisses this action without prejudice.

3 Accordingly, **IT IS HEREBY ORDERED:**

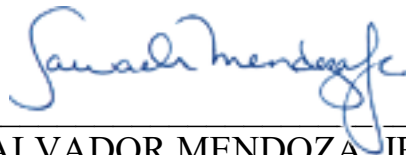
4 **1. This action is DISMISSED WITHOUT PREJUDICE.**

5 **2. All pending Motions are DENIED AS MOOT.**

6 **3. The Clerk's Office is directed to ENTER JUDGMENT and CLOSE**
7 **the file.**

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
9 provide copies to all counsel. The Clerk's Office shall also send copies of this Order
10 to (1) the address on file for Plaintiff and (2) the address listed for Plaintiff in ECF
11 No. 53 at 2.

12 **DATED** this 28th day of April 2022.

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14 SALVADOR MENDOZA, JR.
15 United States District Judge
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